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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,844	08/03/2001	Gary K. Michclson	101.0084-01000	8295
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MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			EXAMINER SNOW, BRUCE EDWARD	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 07/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/921,844

Applicant(s)

MICHELSON, GARY K.

Examiner

Bruce E. Snow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 131, 219 and their depending claims is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and its depending claims is/are allowed.
- 6) ☒ Claim(s) 131, 219 and their depending claims is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/30/07.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 5/30/07 have been fully considered.

The previous objection to the specification has been withdrawn.

The objection to the drawings has been withdrawn.

Applicant's amendment to claim 131 overcame the previous rejection under the first and second paragraphs of 35 U.S.C. 112.

Claim Objection

Claim 131, "said second having a perimeter" should be ~~—said second~~ facet having a perimeter—as supported by applicant's arguments.

Objection to the Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claim 131, "*at least a first and a second portion of said perimeter being arranged to form an included angle greater than 90 degrees*" is not supported in the specification.

Claim 219, "*said rearward facet having a perimeter with a first included angle proximate said peak and said forward facet having a perimeter with a second included angle proximate said peak, said first included angle being greater than said second included angle*" is not supported in the specification.

112 second

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 131 and 219 and their depending claims are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 219, *"said rearward facet having a perimeter with a first included angle proximate said peak and said forward facet having a perimeter with a second included angle proximate said peak, said first included angle being greater than said second included angle"* is ambiguous. It is the Examiner position that applicant has it backward, the second angle is greater than the first. Referring to the elected embodiments shown in at least figures 12 and 15, the rearward facet 326 forms an angle with the side facets 332, 334 which is smaller than a second angle between said side facets and the forward facet 324.

Or, is applicant trying to claim the angles between the forward and rearward facets and the base of the facet (upper or lower surface of the implant), however, this is not considered "proximate said peak".

Finally, the plane in which the included angle is not defined. Without defining said plane, the included angle between facets varies based on the angle of the plane. The first angle can be measure in a different plane than the second.

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Regarding claim 131, the plane in which the included angle is not defined.

Without defining said plane, the included angle between facets varies.

The Examiner notes that none of this language is supported in the specification. Again, is applicant trying to claim the angles between the forward and rearward facets and the base of the facet (upper or lower surface of the implant)?

Allowable Subject Matter

Claims 1 and its depending claims are allowed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

As far as the scope of claims 131 and 219 can be determined, the following is made of record.

Claims 131 and 219 and their depending claims (at least 219, 228-255, 277-284 and (131, 133, 135, 137-145, 205, 206, 213-215, and 272-276) are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Paul et al (6,258,125).

Paul et al teaches a spinal implant comprising a plurality of pyramid-shaped projections 12, as shown in figures 1, 9, 10A, and 11, formed on the upper and lower surfaces of the implant; see 3:42. The projections are slanted towards the trailing end, therefore, having a forward facing facet which is longer than a rearward facet and the slope of the rearward being steeper. The projections further include side facets and a generally rectangular base.

It is the Examiner's interpretation that claims 131 and 219 no longer require the rearward facet having a negative direction of inclination or a portion of the projection extending outside of the perimeter of the base.

Regarding claim 219, "*said rearward facet having a perimeter with a first included angle proximate said peak and said forward facet having a perimeter with a second included angle proximate said peak, said first included angle being greater than said second included angle*" is unclear. It is the Examiner position that applicant has it backward, the second angle is greater than the first. Referring to at least figure 9 of Paul et al, the shorter facet (right side in figures 9 and 10A) forms a smaller angle with the side facets whereas the longer facet (left side in figures 9 and 10A) forms a larger included angle with said side facets.

Regarding claim 131, the longer facet (left side in figures 9 and 10A) forms an angle greater than 90 degrees. Because the side facets slant out from the peak towards the base, the angle has to be greater than 90 degrees.

Many of applicant's dependent claims claim a wide range of limitations, for example, elements/materials/shapes/tools/etc which lack criticality in the specification, the use of any limitations in lieu of those used in the references solves no stated problem and produces no benefits and would have been an obvious matter of design choice for someone skilled in the art. Additionally, these limitations are well known in the prosthetic art and would have been obvious to one having ordinary skill.

Additionally, it would have been obvious to one having ordinary skill to have used any bone growth material known in the art or to have constructed the implant from any material known in the art for their known properties and characteristics.

Finally, it would have been obvious to one skilled in the art to have used the projects of Paul et al on any known vertebrae implant to provide anchoring.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E. Snow whose telephone number is (571) 272-4759. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

bes

A handwritten signature in black ink, appearing to read 'BS' followed by a stylized flourish.

BRUCE SNOW
PRIMARY EXAMINER